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9 *and Brian Williams*

10
11 UNITED STATES DISTRICT COURT
12 DISTRICT OF NEVADA

13 BRANDYN GAYLER,

14 Plaintiff,

15 vs.

16 HIGH DESERT STATE PRISON, et al.,

17 Defendants.
18

CASE NO. 2:17-cv-02429-JAD-EJY

**DEFENDANTS' UNOPPOSED
MOTION TO EXTEND THE
DISPOSITIVE MOTION DEADLINE
(SECOND REQUEST)**

19 Defendants, James Dzurenda, Alexis Lozano, Perry Russell, David Tristan and
20 Brian Williams, by and through counsel, Aaron D. Ford Attorney General for the State of
21 Nevada, and Katlyn M. Brady, Deputy Attorney General, requests this Court grant its
22 unopposed Motion to Extend the Dispositive Motion Deadline.

23 INTRODUCTION

24 This Court should grant Defendants' unopposed Motion to Extend the Dispositive
25 Motion Deadline. On March 9, 2020, this Court granted Plaintiff's Motion to Extend
26 Discovery by 90 days. ECF No. 31. The parties completed the outstanding discovery, but
27 need additional time to determine whether further discovery is necessary. Specifically, the
28 parties are attempting to engage in informal document disclosures to avoid reopening

1 discovery. The informal document disclosure is related to email(s) identified by Perry
2 Russell in his interrogatory responses. Accordingly, the Defendants now move to extend
3 the dispositive motion deadline 90 days to allow the parties to review the recently disclosed
4 information.

5 PROCEDURAL HISTORY

6 This Court entered a scheduling order, which held that discovery would close on
7 February 17, 2020. ECF No. 18. The deadline to file a dispositive motion was set for March
8 18, 2020. *Id.*

9 On February 13, 2020, Plaintiff filed a Motion to Extend Discovery by 90 days. ECF
10 No. 26. On March 9, 2020, this Court granted Plaintiff's motion and held it would extend
11 discovery by 90 days to allow Defendants to respond to Plaintiff's untimely discovery. ECF
12 No. 31. However, the order did not extend the dispositive motion deadline. *See id.* Accordingly,
13 the Defendants submitted an unopposed motion to extend discovery based upon the reopening
14 of discovery. ECF No. 32. This Court granted the motion. ECF No. 33.

15 On April 27, 2020, Defendants provided Plaintiff with the following discovery
16 responses: (1) David Tristan's responses to requests for admissions; (2) Perry Russell's
17 responses to requests for admissions; (3) Alexis Lozano's responses to requests for admissions;
18 (4) James Dzurenda's responses to requests for admissions; and (5) Brian Williams' responses
19 to requests for admissions. Declaration of Counsel attached as Ex. A at ¶3.

20 On May 11, 2020, Defendants provided Plaintiff with the following discovery
21 responses: (1) David Tristan's responses to interrogatories; (2) Perry Russell's responses to
22 interrogatories (3) James Dzurenda's responses to interrogatories; and (4) Brian Williams'
23 Responses to interrogatories. On May 15, 2020, Defendants provided Plaintiff Alexis Lozano's
24 responses to interrogatories. *Id.* at ¶ 4.

25 On May 28, 2020, counsel and Plaintiff engaged in a meet and confer to discuss the
26 dispositive motion deadline. Plaintiff indicated that based on the interrogatory responses he
27 believed there was an email he needed to review before the parties filed dispositive motions.
28 Declaration. Counsel agreed to request the relevant documents, if they exist, and provide

1 them to Plaintiff. *Id.* at ¶ 5-6. The parties believe that this informal discovery production will
 2 avoid the need to reopen discovery and unnecessarily utilize judicial resources. *Id.* at ¶ 7. The
 3 parties further agreed that it was necessary to extend the dispositive motion deadline to allow
 4 for this informal discovery and discussion. *Id.* Accordingly, Plaintiff agreed that Defendants
 5 would submit an unopposed motion to extend the dispositive motion deadline 90 days. *Id.* at
 6 9.

7 LEGAL STANDARD

8 Motions to enlarge are governed by FED R. CIV. PROC. 6(b) and Nevada Local Court
 9 Rule 26-4.

10 (b) Extending Time.

11 (1) In General. When an act may or must be done within a specified time, the
 12 court may, for good cause, extend the time:

13 (A) With or without motion or notice if the court acts, or if a request is
 14 made, before the original time or its extension expires; or

15 (B) On motion made after the time has expired if the party failed to act
 16 because of excusable neglect.^[1]

17 And

18 LR 26-4. EXTENSION OF SCHEDULED DEADLINES

19 A motion or stipulation to extend any date set by the
 20 discovery plan, scheduling order, or other order must, in addition
 21 to satisfying the requirements of LR IA 6-1, be supported by a
 22 showing of good cause for the extension. A motion or stipulation
 23 to extend a deadline set forth in a discovery plan must be
 24 received by the court no later than 21 days before the expiration
 25 of the subject deadline. A request made within 21 days of the
 26 subject deadline must be supported by a showing of good cause.
 27 A request made after the expiration of the subject deadline will
 28 not be granted unless the movant also demonstrates that the
 failure to act was the result of excusable neglect. A motion or
 stipulation to extend a discovery deadline or to reopen discovery
 must include:

(a) A statement specifying the discovery completed;

(b) A specific description of the discovery that remains to
 be completed;

¹ FED R. CIV. PROC. 6(b).

(c) The reasons why the deadline was not satisfied or the remaining discovery was not completed within the time limits set by the discovery plan; and

(d) A proposed schedule for completing all remaining discovery.^[2]

LEGAL ARGUMENT

This Court should extend the dispositive motion deadline because the parties are engaging in extremely limited informal discovery exchanges. In accordance with LR 26-4, Defendants provide the following information.

1. The discovery completed to date

To date, the following discovery was completed: Brian Williams' Interrogatories to Plaintiff, James Dzurenda's Interrogatories to Plaintiff, Alexis Lozano's Interrogatories to Plaintiff, Perry Russell's Interrogatories to Plaintiff, and David Tristan's Interrogatories to Plaintiff; David Tristan's responses to requests for admissions; Perry Russell's responses to requests for admissions; Alexis Lozano's responses to requests for admissions; James Dzurenda's responses to requests for admissions; and Brian Williams' responses to requests for admissions; David Tristan's responses to interrogatories; Perry Russell's responses to interrogatories; James Dzurenda's responses to interrogatories; Brian Williams' Responses to interrogatories; and Plaintiff Alexis Lozano's responses to interrogatories.

2. Discovery that remains to be completed

The following discovery remains outstanding: an informal exchange of existing documents regarding Plaintiff's disciplinary charges.

3. The reason the dispositive motion deadline cannot be completed

The current dispositive motion deadline cannot be completed because the parties are engaging in an informal discovery process regarding Plaintiff's claims. Specifically, the interrogatory responses revealed the possible existence of an email(s) that could be highly relevant to Plaintiff's claims. To avoid reopening discovery, counsel has agreed to search

² Nevada Local Court Rules 26-4.

1 for the email(s) and produce it, should it exist. Dispositive motions cannot be completed
2 until this search and disclosure has been completed.

3 **4. Proposed discovery schedule**

4 **Deadline for Dispositive Motions:** September 7, 2020

5 **Deadline for Joint Pretrial Order:** October 7, 2020. If dispositive motions are
6 filed, the joint pretrial order is due thirty (30) days after the entry of the Court's order on
7 the motions.

8 **CONCLUSION**

9 This Court should grant Defendants' unopposed motion to extend the dispositive
10 motion deadline. The parties respectfully request this Court extend the dispositive motion
11 deadline so the parties can engage in informal discovery.

12 DATED this 3rd day of June, 2020.

13 AARON D. FORD
14 Attorney General

15 By: /s/ Katlyn M. Brady
16 Katlyn M. Brady (Bar No. 14173)
17 Deputy Attorney General
18 *Attorneys for Defendants*

19
20 **IT IS SO ORDERED.**

21 
22 DAYNA J. ZOUCACH
23 **UNITED STATES MAGISTRATE JUDGE**

24 **Dated: June 3, 2020**
25
26
27
28